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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

LETTERS PATENT APPEAL NO. 276 OF 2006

Neelam K. Tripathi ... Appellant

V/s

The State of Maharashtra & ors. ... Respondents

Mr. Sagar Joshi for the appellant.

Ms. P.S. Cardozo, A.G.P. for the respondent State.

**CORAM: S. B. MHASE &**
**SMT. NISHITA MHATRE, JJ.**

**DATED: 22ND FEBRUARY, 2007.**

**P.C.**:

1. Heard both sides.

2. Perused the order of the Single Judge. The enquiry which was conducted by the Education Department was in view of the order passed by the Division Bench of this Court on 1.12.2005 in Writ Petition No. 4557 of 2005. After enquiry, the Education Officer has found that the due process of the recruitment is not followed. In addition to that the Single Judge of this Court has also found that there was no substantive post vacant and the appointment order was issued intending that the post

will be available. Basically when the post is not available, then there is no question of issuance of an appointment order and recruiting the present petitioner. We find that the petition has been rightly disposed of by the Single Judge. No interference is called for. The appeal is hereby rejected.

3. In view of disposal of the appeal, Civil Application No. 366 of 2006 also stands disposed of.

(SMT. NISHITA MHATRE, J.) (S.B. MHASE, J.)